IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

C O R A M

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No.28105 of 2002

1. M.Doraisamy (Died)

2. D.Sarala Devi
[P2 substituted as LRS of deceased P1
M.Doraisamy as per order dated
20.10.2017 by SMSJ in WMP.No.26246/17
in W.P.No.28105/04]. ... Petitioner

Vs.

1.The State of Tamil Nadu represented by
Secretary to Government, Handlooms,
Handicrafts, Textiles and Khadi Department,
St.Fort George, Chennai - 600 009.

2.Tamil Nadu Khadi and Village Industries,
Board represented by its
Chief Executive Officer,
Kuralagam Building,
Esplanade, Chennai - 108. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying to issue a writ of certiorarified mandamus calling for the records comprised in G.O.(D).No.87, (Handlooms, Handicrafts, Textiles and Khadi (F1) Department on the file of the first respondent dated 08.06.2004 and quash the same and consequently direct the respondents to disburse the amount of retirement benefits to the petitioner and backwages due to the petitioner.

For Petitioner : Mr.R.Bharani Dharan
For Respondents
R1 : Ms.R.Janaki
Additional Government Pleader
R2 : Mr.S.K.Bose

O R D E R

The writ petitioner was appointed as Foremen under the respondents on 28.05.1957. He was given additional charge to look after the Footwear Unit shifted to Ambattur on 31.12.1987. He has informed the Superior Officer that the building to which the Ambattur unit was shifted is not safe

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and the doors, windows were not in a good condition and there is a hole in the back wall. In spite of that the Superior Officer decided to shift the unit to that building. On 11.04.1998 when the petitioner opened the office, he found that certain materials were missing.

2. On the instructions of the Regional Deputy Director and the Assistant Deputy Director, a police complaint was lodged by him on 16.04.1998. The deficit stock to the tune of Rs.4,06,730.85/- was found during the special audit, immediately on 24.05.1988 the petitioner was put under suspension and a charge memo was issued on 04.03.1989 for the alleged loss of stocks worth Rs.6,27,521/-. Originally on 30.09.1987, when verification of stock was made the deficit was found as Rs.428.50/-. Suddenly within a period of six months, the deficit was calculated at Rs.6,27,521/-. The order of recovery was also made against the petitioner, which he challenged in W.P.No.12160 of 1989. This Hon'ble Court by its order dated 01.02.1990 set aside the order of recovery on the ground of denial of opportunity. Thereafter, the Chief Executive Officer / the 2nd respondent passed an order of termination dated 29.09.1995 relying on the statement given by the watchmen. Against which, the petitioner filed an appeal to the Government which was rejected in G.O.Ms.No.70 Handlooms, Handicrafts, Textiles and Khadi (F1) Department dated 08.02.1999. The petitioner challenged that order vide WP.No.6406/1999. The Hon'ble Court set aside the punishment order and remanded the matter back on 27.06.2003. Thereafter, a fresh order of punishment was passed in G.O.Ms.No.87 Handlooms, Handicrafts, Textiles and Kadhi (F1) Department dated 08.06.2004 which is under challenge in the present writ petition.

3. The learned counsel appearing for the petitioner would contend that in spite of the remand order made by this Court, principles of natural justice was not afforded the petitioner, and his requests were not at all considered and specifically the charge impugned who made the statement was not examined as witness and opportunity of cross-examining him was not afforded to the petitioner.

4. Controverting the allegations, the 1st respondent filed a detailed counter affidavit based on which the learned counsel appearing for the respondents would submit his arguments. According to him, the Development Officer has given a report as to the stability of the building and that the police have closed the case as a mistake of fact. The petitioner being responsible for the entire affairs of the unit had cooked up a false case and attempts to escape from the charges. The scene created by the petitioner as there was a theft is falsified by virtue of investigation conducted by the police and closure report as one mistake of fact. The watch man has given a clear statement that there was no chances for theft and that he was available all the time and

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no theft had taken place. The larger quantities of materials cannot be taken by hands and can only be transported by lorry. Based on that statement, it is presumed that the petitioner would have removed the materials with the use of lorry. Based on the statement given by the Officer on 30.12.1993, the Regional Deputy Director made his remarks and held the charge proved in Na.Ka.No.10541/88/E1 dated 18.05.1994, based on which, the punishment of removal from service was imposed on the petitioner. The petitioner had involved in similar misconduct, for which, he was imposed with a punishment for stoppage of increment cumulatively for 3 years. It is the second instance and hence such punishment was imposed which is justified, legal and does not require interference.

5. I heard the submission on both sides.

6. On perusal of the materials placed before this Court, it is clearly seen that the entire disciplinary proceedings is based on the statements made by the Watchman, Development Officer, Regional Deputy Manager. The charge memo came to be issued to the petitioner to which he submitted his explanation denying all the charges. But relying on the written statement given by the watchman it was held proved and punishment of removal was imposed. The said order was challenged before this Court.

7. This Court by its order dated 27.06.2003 in W.P.No.6406 of 1999 set aside the punishment order, remanded the matter back to the 1st respondent giving opportunity to the petitioner to raise fresh grounds. The additional grounds raised by the petitioner are as under:-

> "(i) order of punishment has been passed by Chief Executive Officer instead of the Commissioner and Secretary to Government and therefore the order is without jurisdiction;
>
> (ii) non-supply of copy of the documents which were relied on by the Department inspite of the order in W.P.No.12160/89 dated 1.2.90;
>
> (iii) not providing certain Show Cause Notice as required by amdended regualtion;
>
> (iv) without holding oral enquiry in the prsence of the delinquent but treated the statement of Watchman as evidence;
>
> (v) denial of right of cross examining the watchman whose statement was considered as evidence;"

8. It is relevant to point out that the petitioner has raised the grievance that no oral enquiry was held and the matter was decided on the basis of statement made by watchman and that the denial of right to cross-examine the watchman would vitiate the order.

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9. The grievance of the petitioner is that inspite of the orders of this Court, the respondents did not care to conduct any enquiry. In reply the learned counsel for the respondent would submit that incident had taken place before 2000. At the relevant point of time no procedure for conducting any enquiry was contemplated the Rules or bye-laws and hence no enquiry was conducted. The above stand taken by the respondent, inspite of the orders of this Court to conduct oral enquiry and provide opportunity of cross-examination would show they are not inclined to conduct enquiry and thereby are not willing to follow the procedure in conformity with principles of natural justice. On the other hand, without adopting a fair procedure, whatever statement made by the Development Officer and the remark made by the Regional Deputy Manger were taken as gospel truth and punishment order was imposed. To be precise, when the capital punishment was imposed, the respondent did not conduct any personal hearing, did not examine any witnesses, who made the allegations, much less the opportunity to cross examine such witness was not offered to the delinquent.

10. The overall circumstance would make it clear that respondents inspite of the directions of this Court in the previous proceedings deliberately passed an order of removal in violation of principles of natural justice and it appears to the Court that it is an attempt to make the petitioner a scape goat to the stock deficit. As discussed above, denial of opportunity to examine the watchman by itself would vitiate the entire proceedings. Another crucial point made out by the petitioner is that during the previous stock verification on 30.09.1987 the deficit of stock was found to be Rs.428.50/-. The said watchman would affirm that theft had not taken place. He also did not state that the petitioner brought some lorry and removed the materials and his further statement would clearly show that there is no chance of removing such big volume of materials by hands. The petitioner without the knowledge of the watchman would not have removed so much of materials by hands. If that be so, there is no explanation as to how the deficit of stock has taken place. Without explaining as to how the stock deficit of Rs.428.50 rose to Rs.6,27,521/-, and without explaining the instructions given to lodge a police complainant and without pinpointing the theft or misconduct committed by petitioner, it can bot be held the petitioner is the culprit without proof. Only because he was given charge of that office, he cannot be made a scape goat. In that view of the matter, non examination of watchman is fatal to the prosecution case. The respondents appeared to have fixed the petitioner in order to escape from the responsibility and to save their skin. So, in such circumstances, it is very clear that the respondents had deliberate intentions to avoid conduct of enquiry, taking shelter under the so called rules. Even if it is not specified in the rules, principles of natural justice shall be read in to the rules. No person can be condemned without an

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opportunity of hearing. In that view of the matter the respondents, in spite of the directions given, have violated principles of natural justice. Hence, this Court is of the considered opinion, the punishment order imposed in G.O.(D). No.87, (Handlooms, Handicrafts, Textiles and Khadi (F1) Department on the file of the first respondent dated 08.06.2004, is illegal and is liable to be set aside.

11. At the time of initiation of the proceedings, the petitioner was about to retire. At the time of filing the writ petition, he was 75 years old. During the pendency of the writ appeal, he passed away and his legal heir is substituted in his place now that the impugned order is set aside and consequently, the terminal benefits due to the petitioner shall be disbursed to the legal heir substituted in this writ petition. This exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS-III)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
   State of Tamil Nadu,
   Handlooms, Handicrafts, Textiles and
   Khadi Department,
   St.Fort George, Chennai - 600 009.

2. The Chief Executive Officer,
   Tamil Nadu Khadi and Village Industries,
   Kuralagam Building,
   Esplanade, Chennai - 108.

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MR(CO)
GMY(27/07/2020)

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